Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1998

COUNTY OF SAN DIEGO, ET AL.,

Petitioners,

v.

LOUIS SCHNEIDER,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Under The Due Process Clause:

a. In a lawsuit for damages under 42 U.S.C. section 1983 and the Fourteenth Amendment's ***Due Process Clause*** for government-ordered destruction of private property without sufficient notice (procedural due process), can the trial jury determine that notice was sufficient because of the claimant's ***actual knowledge***?

b. Must ***additional*** pre-deprivation notice be given following a pre-deprivation administrative hearing at which the government prevails on all contested issues?

2. Under The Takings Clause:

Does a Fourteenth Amendment ***Due Process Clause*** violation negate a trial jury's finding that there was a valid ***public purpose*** for taking property, resulting in automatic liability under the Fifth Amendment's ***Takings Clause***?

3. Constitutional Liability Of Private Individuals Who Act In Good Faith.

Is a ***private*** defendant who performs under official direction and close official supervision, and who acts in complete ***good faith***, automatically liable under 42 U.S.C. section 1983 without personal fault, solely because the ***private*** defendant's acts were also "under color of law"?

QUESTIONS PRESENTED – Continued

4. Constitutional Liability of Local Government Entities for Implementing State Policies.

When the ***state*** legislature commands that all ***local*** ordinances must require property destruction under defined conditions, is a ***local*** entity liable under 42 United States Code section 1983 for implementing its own policy under those defined conditions, when its ***local*** policymakers did not choose from among various alternatives, but followed mandatory ***state*** policy in destroying property?

Each of these questions presents a novel issue that has never been squarely ruled upon by this Court.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners County of San Diego (hereinafter "COUNTY") and Gregory Reynolds, dba Reybro, Inc., respectfully pray that a writ of certiorari issue to review the Memorandum of the United States Court of Appeals for the Ninth Circuit entered in this case on April 24, 1998.

OPINIONS BELOW

The Memorandum of the Court of Appeals is at Appendix 1-8. The District Court's Order Denying Plaintiff's Motion for Judgment as a Matter of Law; Denying Plaintiff's Request for New Trial is at Appendix 11-19. The Judgment is at Appendix 20. The Jury's Verdict is at Appendix 21-26. The earlier opinion of the Court of Appeals in this case (reversing summary judgment for defendants) was reported at 28 F.3d 89 (9th Cir. 1994).

JURISDICTION

The memorandum of the Court of Appeals for the Ninth Circuit was originally entered on April 24, 1998. A timely Combined Petition for Rehearing and Suggestion for Rehearing En Banc was denied on July 14, 1998. (App. 9-10.) This petition for certiorari was filed within 90 days of that date.

This Court's jurisdiction is invoked under 28 United States Code section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution:

AMENDMENT V – . . . nor shall private property be taken for public use, without just compensation.

AMENDMENT XIV – . . .

Section 1. . . . nor shall any State deprive any person of . . . property, without due process of law. . . .

42 United States Code:

§ 1983. Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

California Vehicle Code:

§ 22661. Contents of ordinance.

Any ordinance establishing procedures for the removal of abandoned vehicles shall contain all of the following provisions: . . .

(f) The requirement that after a vehicle has been removed, it shall not be reconstructed or made operable, . . .

San Diego County Code of Regulatory Ordinances:

Sec. 78.114. Any vehicles removed pursuant to this Division may be disposed of by removal to a scrapyard or licensed automobile dismantler's yard. After a vehicle has been removed pursuant to this Division, it shall not be reconstructed or made operable.

STATEMENT

This case presents no issues of improper evidence or erroneous jury instructions, and this Petition is based entirely on novel legal issues which this Court left open in earlier cases, and which were used by the Ninth Circuit Court of Appeals to overturn a jury's well-considered verdict. Parenthetically, many paragraphs in the Ninth Circuit's Memorandum start with phrases such as: "[w]e decline to address the defendants' contention . . . ," or "[w]e reject the County's argument . . . ," or "[w]e reject the claim . . . ," but readers should not infer that there was less than a complete defense verdict in District Court.

Plaintiff Schneider illegally stored thirteen old buses and other vehicles in an open field by a highway, and soon the County received public complaints about them. County nuisance abatement officers then mailed and posted numerous notices of zoning and regulatory nuisances. Schneider defied the notices – he literally threatened to shoot the County abatement officer. He

demanded and received an administrative hearing. The hearing officer ruled in the County's favor. The County then contracted with Gregory Reynolds, d/b/a/ Reybro, to remove and dismantle the vehicles. The vehicles were removed in one day under direct County supervision, then dismantled by Reynolds over the next few months. Schneider visited Reynolds and made more threats, but he took no legal steps to stop Reynolds from scrapping the vehicles. (See generally, App. 11-19.)

Schneider filed a federal civil rights lawsuit against everyone involved in the nuisance abatement, including the hearing officer. (App. 62-75.) In 1992 the defendants won summary judgment, but the Ninth Circuit reversed on the issue of pre-deprivation notice, though that issue had never been raised in District Court in opposition to summary judgment. (App. 11-12.) The case was then tried to a jury in 1995. Before trial, Schneider dropped all defendants except the County and Reynolds. The jury returned a defense verdict.

After trial, the District Court Judge correctly ruled (in the Order Denying Plaintiff's Motion for Judgment as a Matter of Law; Denying Plaintiff's Request for New Trial) that Schneider "repeatedly and flagrantly violated Vehicle Code provisions in order to avoid receiving legal notices . . . ," adding that Schneider had chosen not to register vehicles in his name because, as he admitted, he did not want to "be held legally liable" in connection with them. Schneider had warned members of his household not to receive notifications addressed to him because "it would cause me a lot of grief." (App. 12-15.)

Schneider was trained as a lawyer and has a working knowledge of the California Vehicle Code. (App. 12.) He defied the abatement process, but he never lacked actual knowledge of that process and its potential consequences. From any standpoint, the Ninth Circuit's ruling is difficult to fathom, except in terms of using legal issues which have never been squarely decided by this Court as a creative way of imposing strict liability in the face of overwhelming contrary evidence.

REASONS FOR GRANTING THE PETITION

Does government violate the notice component of procedural due process when (1) it gives notice of intended property destruction, (2) it prevails at a post-notice administrative hearing, (3) it proceeds with property destruction, and (4) the claimant had actual knowledge throughout the process? The jury said "no," but despite such straightforward facts, the Ninth Circuit Court of Appeals reversed, holding that the Fourteenth Amendment's ***Due Process Clause*** and the Fifth Amendment's ***Just Compensation Clause*** were violated. The Ninth Circuit also found the fault-free private contractor liable merely because he acted "under color of law," and imposed policy liability even though the county was following a mandatory state policy. This remarkable ruling is based upon unreasonable interpretations of legal points that have never been squarely addressed by this Court. This case presents an opportunity for this Court to answer the legal questions against a factually-unambiguous background.

This Court has noted that procedural due process rules are intended to protect persons from mistaken or unjustified deprivations of property, but not from all government deprivations of property. *Carey v. Piphus*, 435 U.S. 247, 259 (1978); *Mathews v. Eldridge*, 424 U.S. 319, 344 (1976). However, this Court has never squarely ruled whether a claimant's actual knowledge is a defense to allegations of inadequate pre-deprivation notice. In recent cases (including this one), the Ninth Circuit Court of Appeals has ordered liability at the appellate level for abstract imperfections in pre-deprivation notice, regardless of the claimants' actual knowledge. In this case, the Ninth Circuit went even further, ruling that ***Takings Clause*** liability automatically flowed from the ***Due Process Clause*** violation, apparently to get around the *Carey* principle that only nominal (not actual) damages should be awarded when a deprivation without procedural due process is otherwise justified. *Carey*, 435 U.S. 247, 248.

There are no bright-line standards defining how much notice is needed to satisfy procedural due process. This enables the Ninth Circuit to decree liability simply by finding (as a matter of law) that whatever notice was given – no matter how much – was never quite enough. This case demonstrates how far the Ninth Circuit has gone to decree governmental liability based upon abstractions, while ignoring overwhelming factual evidence of a claimant's actual knowledge.

A recent case from the Ninth Circuit on a related notice issue is *Perkins v. City of West Covina*, 113 F.3d 1004 (9th Cir.), *cert. granted*, (1997), in which the Ninth Circuit

simply decreed summary judgment against the government ***on appeal*** because the pre-deprivation notice arguably could have conveyed more details of how to reclaim seized property. In that case, summary judgment was ordered before trial, before a jury could test whether the plaintiff had sufficient actual knowledge. Now the Ninth Circuit has gone a big step beyond *Perkins*. In this case, a jury of reasonable persons tested such evidence in the crucible of trial and denied liability. The Ninth Circuit simply tossed out the jury's verdict without even discussing that evidence.

I

DUE PROCESS CLAUSE

There were numerous pre-deprivation, pre-hearing notices in this case, all of them quite specific. Most of the notices contained the following language:

> The above-described vehicle . . . constitutes a public nuisance and is in violation of California Vehicle Code Section 22660.
>
> **This is your official warning that this abandoned vehicle will be removed and dismantled after fifteen (15) days from the date of this notice pursuant to the California Vehicle Code. After the vehicle has been removed, it must be dismantled and cannot be returned or made operable again. . . .**
>
> TO COMPLY
>
> If you are currently in direct control of this vehicle, it must be removed, stored in an enclosed garage, or restored to fully operational

> condition, capable of being operated legally upon the highway (currently registered). . . .
>
> RIGHT TO APPEAL
>
> You are entitled to a hearing and may accomplish this by contacting the Abandoned Vehicle Abatement Office . . . within ten (10) days of the date of this notice. (Bold emphasis in original.)

One of these notices (which pertained to a vehicle which had been last registered as "junk") is reproduced at Appendix 44-45. The Ninth Circuit dismissed these notices as "merely 'courtesy letters'," mischaracterizing testimony in the process.[1]

An earlier opinion of the Ninth Circuit in this case reversed pre-trial summary judgment for the defendants, and ruled that the hearing officer's order failed to convey sufficient notice that the vehicles would be scrapped.[2] That earlier ruling did not consider any evidence of Schneider's actual knowledge. It could not have done so, since the pre-deprivation notice issue had not been raised in opposition to the summary judgment which the Ninth Circuit reversed.

At trial, the jury was fully instructed in accordance with the Ninth Circuit's earlier ruling in this case. The jury was also instructed on the notice requirement of procedural due process, and on the various ways notice is

---

[1] One witness (Carole Howard) called the notices "courtesy letters;" the word "merely" was added by the Ninth Circuit, contrary to the evidence as a whole. (See App. 77.)

[2] *Schneider v. County of San Diego*, 28 F.3d 89 (9th Cir. 1994), *cert. denied*, 513 U.S. 1155 (1995).

accomplished. These instructions were based upon standard jury instructions commonly given in other fact situations in which notice is the issue. None of the instructions has been attacked on appeal. (App. 27-28.)

The jury was satisfied that Schneider's actual knowledge satisfied procedural due process. By ignoring both the evidence and the verdict, the Ninth Circuit's latest ruling actually denies procedural due process to the defendants.

Curiously, the Ninth Circuit has consistently refused to rule whether the pre-deprivation notices given ***before*** the administrative hearing were constitutionally sufficient. (See App. 4.) Without answering that critical question, the Ninth Circuit held that ***additional*** pre-deprivation notice was required ***after hearing***, as follows:

> On remand, neither the County nor Reybro presented any evidence that Schneider received post-hearing notice that his vehicles would be destroyed. Schneider was therefore entitled to judgment as a matter of law on his procedural due process claim. (App. 2-3.)

The Ninth Circuit's reasoning was as follows:

> We reject the County's argument that the district court erred in concluding that the hearing officer affirmed the Notice and Order to Abate only insofar as it found Schneider was in violation of Sections 1006 and 6799 of the San Diego County Code. The hearing officer twice referred to these provisions specifically, and effectively narrowed the County nuisance finding to them. (App. 3.)

Parenthetically, the District Court had no choice but to follow the Ninth Circuit's holding in the earlier appeal, in which it held that the hearing officer's order was "effectively narrowed" to zoning violations, and did not cover violations of the Regulatory Ordinances which authorized dismantling of vehicles.

The theory that the hearing officer "effectively narrowed" her order to zoning violations has always been the sole creation of the Ninth Circuit. In simplest terms, the Ninth Circuit ruled that the hearing officer's order was "effectively narrowed" to zoning violations when the hearing officer listed sections 1006 and 6799 of the Zoning Ordinances by number in her order. To reach that "narrowed" interpretation, the Ninth Circuit had to purposefully ignore the rest of the very same clause of the same sentence of the hearing officer's order. The full paragraph of the hearing officer's order is as follows:

> 2. IT IS FURTHER ORDERED that: Louis Schneider shall comply with the order to Abate issued September 26, 1989, and shall do or cause to be done all things necessary to bring the property in compliance with all of the requirements of sections 1006 and 6799 of the San Diego County Zoning Ordinance ***and Code of Regulatory Ordinances*** by removing all vehicles, and doing all things necessary to cure the defects which form the basis of the Public Nuisance so declared to the satisfaction of the Code Enforcement Officer of the Department of Planning and Land Use within thirty (30) calendar days from the date this order is mailed to appellant. (App. 36; emphasis added.)

The Ninth Circuit is correct that Zoning Ordinance sections 1006 and 6799 do not authorize destruction of vehicles, but the Ninth Circuit then ignores the plain fact that the separate Code of Regulatory Ordinances is referred to in the very same phrase. Those Regulatory Ordinances do indeed authorize vehicle destruction.

The Regulatory Ordinances include the following section:

> **San Diego County Code of Regulatory Ordinances:**
>
> Sec. 78.114. Any vehicles removed pursuant to this Division may be disposed of by removal to a scrapyard or licensed automobile dismantler's yard. After a vehicle has been removed pursuant to this Division, it shall not be reconstructed or made operable. (App. 47.)

A senior County abatement official (Gray) accurately concluded that the hearing officer's order clearly authorized vehicle destruction. She testified to her interpretation at trial, and her testimony withstood cross-examination. (App. 76-78). Schneider did nothing whatsoever to comply with the hearing officer's order, which found against Schneider on each and every contested issue. In other words, the Ninth Circuit's "narrowed" interpretation of the hearing officer's order is unfounded, and only makes sense in an "end-justifies-means" context.

The evidence convinced the jury that Schneider actually knew what was happening at every step of the process. Actual knowledge, however, has never been squarely recognized by this Court as a defense to allegations of insufficient pre-deprivation notice. In this case,

that vacuum has enabled the Ninth Circuit to decree governmental liability in favor of a defiant, highly-knowledgeable lawbreaker in the face of overwhelming factual evidence. This case presents an opportunity to remedy that injustice, while also answering whether liability in such cases can be defeated when the evidence proves that the claimant had actual pre-deprivation knowledge, regardless of abstract notice imperfections.

II

TAKINGS CLAUSE

The Ninth Circuit did not stop with decreeing ***Due Process Clause*** liability. It also found that the purported procedural due process violation negated the jury's finding that there was a valid ***public purpose*** for scrapping the vehicles, resulting in automatic ***Takings Clause*** liability. Although the Memorandum acknowledges that the County "has consistently insisted that [the vehicles] were destroyed to serve the public purpose of nuisance abatement," it holds that "as the vehicles were not themselves nuisances, their destruction cannot fall within the 'nuisance exception' to the Takings Clause and cannot be said to have served the public purpose of nuisance abatement." (App. 5.)

Like the due process holding, this holding is based on the unfounded theory that the administrative hearing officer "effectively narrowed" her order to zoning (not regulatory) violations. The Ninth Circuit's holding is certainly not based on evidence of the vehicles' actual condition. (App. 13-14.)

The jury had overwhelming evidence (including photographs) showing that the vehicles were themselves nuisances. One bus had plywood covering its vacant engine hatch. Smashed windows, vandalization, and graffiti were common. One vehicle had an expired registration which literally described it as "junk." No registered vehicle owner contested any of the notices of abandoned vehicles. Nuisance abatement followed numerous citizen complaints about the vehicles themselves. In addition to all that, the jury was correctly instructed on the Takings Clause, and returned a defense verdict on that specific issue. (App. 22, 29.)

The Ninth Circuit's holding that "[a]s the vehicles were not themselves nuisances, their destruction cannot fall within the 'nuisance exception' to the Takings Clause . . . " also ignores what happened at the pre-deprivation administrative hearing. Schneider did not deny that the vehicles were themselves nuisances – he actually admitted they were inoperative, which brought them within the meaning of "public nuisance" as defined in the original pre-deprivation notices. (Compare App. 41, 44 and 77.)

Parenthetically, there is no authority squarely holding that vehicles must themselves be nuisances before their owners can be deprived of them on a nuisance theory. In *Bennis v. Michigan*, 516 U.S. 442 (1996), a car was taken as a public nuisance because the co-owner spouse had used it for "sexual activity with a prostitute." In that case, the car's condition did not create the nuisance, but this Court has not squarely held whether a vehicle needs to itself be a nuisance before it can be taken on a nuisance theory.

Assuming that destruction of vehicles violated procedural due process (as the Ninth Circuit ruled), a procedural due process violation proves nothing about whether nuisance abatement was the "public purpose" of vehicle destruction. One District Court has noted that there is no authority that a ***Due Process Clause*** violation equals a ***Takings Clause*** violation:

> Whether or not the prohibition of the Fourteenth Amendment against depriving any person of property without due process of law is the same as the prohibition of the Fifth Amendment against the taking of private property for public use without just compensation, under either Amendment "public use" includes "public interest."

Midkiff v. Tom, 471 F.Supp. 871, 876-881 (D.C.Hawaii 1979). That question still remains open in this Court.

Further, this Court has never decided whether governmental property deprivation lacks a public purpose when it also lacks a private purpose. If "public purpose" is one side of the coin, then presumably "private purpose" is the flip side. See *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984) (property redistribution plan did not violate public purpose requirement merely because private parties would benefit). The Ninth Circuit found neither a public nor a private purpose.

The main question, however, is whether a procedural due process violation yields automatic ***Takings Clause*** liability because the public purpose is thereby negated. This case presents a factually-unambiguous basis for answering that question.

III

PRIVATE DEFENDANT LIABILITY

The Ninth Circuit decreed that the private defendant Reynolds is liable, even though he was not at fault in any way. Reynolds (whom the Memorandum refers to by his "d/b/a" of "Reybro") is a private contractor who removed the vehicles from Schneider's land under official direction and close official supervision, then dismantled them over the next few months. He acted in complete ***good faith***, but the Ninth Circuit held him automatically liable under 42 U.S.C. section 1983 solely because, like the County, he acted "under color of . . . law." Liability of private parties in that context has never been squarely decided by this Court. Moreover, the availability of a good faith affirmative defense was specifically left open in two recent Supreme Court decisions.

In *Wyatt v. Cole*, 504 U.S. 158 (1992), qualified immunity from a lawsuit was not available to private defendants charged with section 1983 liability for invoking state replevin, garnishment or attachment statutes. This Court highlighted policy concerns mandating qualified immunity for officials in public cases – the need to preserve the officials' ability to perform their discretionary functions and the need to ensure that talented candidates not be deterred by the threat of damages suits from entering public service – which are not applicable to private parties.

The question on which this Court granted certiorari in *Wyatt* was a very narrow one: "[W]hether private persons, who conspire with state officials to violate constitutional rights, have available the good faith immunity

applicable to public officials." *Id.* at 168. The precise issue was whether qualified immunity was available for private defendants faced with section 1983 liability for invoking a state replevin, garnishment or attachment statute. This Court answered "no." However, in so holding, this Court did not foreclose the possibility that private defendants faced with section 1983 liability could be entitled to an affirmative defense based, inter alia, on good faith, or that section 1983 suits against private (rather than governmental) parties could require plaintiffs to carry additional burdens. *Id.*

The good faith defense for private parties was again suggested by this Court's ruling in *Richardson v. McKnight*, ___ U.S. ___, 117 S.Ct. 2100 (1997), which suggests (without deciding) that such a private party may be entitled to a good faith defense. In *Richardson*, this Court held that prison guards who work for a private prison management company are not entitled to qualified immunity from prisoner lawsuits. Such a defense was rejected for situations in which a private firm "has been systematically organized to assume a major lengthy administrative task (managing an institution) with limited direct supervision by the government. . . . " *Id.* at 2108. *Richardson* suggests that a good faith defense may be available for a defendant who does not fit one or more of those descriptions. This is such a case.

Here, the evidence at trial established that Reynolds was a licensed vehicle dismantler who submitted a bid and won a contract for the Schneider job. Reynolds had nothing to do with notice or hearing, and only became involved after that process was completed. The evidence

clearly established that Reynolds was acting under official direction and close official supervision. He removed the vehicles from Schneider's land in the presence of County officials. The County directed his actions and even took photographs as he removed vehicles from Schneider's land. Any factual dispute about Reynolds' good faith was resolved in his favor by the jury. All factual allegations against him were squarely rejected. Reynolds consistently asserted a "good faith" defense, and the Ninth Circuit rejected that defense as a matter of law, holding Reynolds jointly liable without regard to whether he actually did anything wrong. (App. 6-7, 23-26.)

This Court in *Richardson* echoed the same question left open in *Wyatt* regarding the possibility that private defendants might assert "a special 'good faith' defense," but did not go further because "those issues were not fairly before the Court." Those issues are now presented. Reynolds is an example of a fault-free private party who should not be strictly liable under section 1983 for alleged governmental deficiencies in which he played no part. He performed his contract in conspicuous good faith, and should not have even been sued, much less had a jury verdict in his favor thrown out without so much as a discussion of what he supposedly did wrong.

IV

DIRECT LIABILITY OF LOCAL ENTITIES FOR IMPLEMENTING STATE POLICY

The Ninth Circuit decreed direct County liability in the face of *Monell v. Dept. of Soc. Serv.*, 436 U.S. 658 (1978),

by holding that: "The County is liable under section 1983 because ***it followed its official policy in disposing of Schneider's vehicles.***" (Emphasis added.)

The jury made no such finding, and the Ninth Circuit did not explain the factual basis for its *ipse dixit* ruling. (Compare App. 6 and 21-26.) The County consistently asserted (and the evidence at trial established) that it acted under ***state*** compulsion in disposing of the vehicles.

An official policy is established "where – and only where – a deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483-484 (1986). County policymakers did not choose the manner of "disposing of Schneider's vehicles" from "among various alternatives," because state law mandated the method and gave no choice.

In *McMillian v. Monroe County*, ___ U.S. ___, 117 S.Ct. 1734, 1739-1740 (1997), this Court held that a county sheriff who acts under state supervision is not a county policymaker. By the same token, county policymakers who lack discretion because state law mandates the result do not implement their own policy; they implement ***state*** policy.

Reasonable persons may argue whether a policy is good or bad, but no one can deny that a state may dictate what policy a county must follow. By analogy, when a lower court is compelled by higher court precedent to reach a certain outcome, the lower court is not following

its own precedent, but is implementing precedent mandated by the higher court. The same principle applied in this case.

In this case, the pre-deprivation notices of vehicle destruction referred specifically to "violation of California Vehicle Code section 22660," and further stated that vehicles would be "dismantled . . . pursuant to the California Vehicle Code." (App. 44.) The applicable Vehicle Code section is section 22661(f), which is part of the same chapter as section 22660. (App. 46.) That state law reads as follows:

CALIFORNIA VEHICLE CODE

§ 22661. Contents of ordinance

> Any ordinance establishing procedures for the removal of abandoned vehicles shall contain all of the following provisions: . . .
>
> (f) The requirement that after a vehicle has been removed, it shall not be reconstructed or made operable, . . . (App. 46.)

Thus, state law gave County policymakers no discretion to ordain otherwise.

The evidence at trial consistently established that state law compelled destruction of vehicles in this case. Witness Carole Howard testified at trial that the vehicles were destroyed because ***state*** law required it. Schneider's counsel cross examined her on whether vehicle destruction was the County's official policy, and she responded: "[w]hen we remove a vehicle, it's state law that we dismantle it." (App. 31.)

When, as in this case, ordinary non-policymaking County employees act pursuant to ***state*** mandate, that fact should not make the County liable under *Monell*, because:

> A county official pursues his duties as a state agent when he is enforcing state law or policy. He acts as a county agent when he is enforcing county law or policy. It may be possible for the officer to wear both state and county hats at the same time, . . . , but when a state statute directs the actions of an official, as here, the officer, be he state or local, is acting as a state official.

Echols v. Parker, 909 F.2d 795, 801 (5th Cir. 1990) (arrest and prosecution by county employees under an unconstitutional state statute).

This Court has never squarely adopted such a rationale, and that vacuum has enabled the Ninth Circuit to decree County policy liability even though both the facts and the law made it clear that County policymakers were actually implementing state policy. This case presents an unambiguous opportunity for this Court to squarely rule upon this important issue.

CONCLUSION

The Ninth Circuit was able to rule as it did in this case because important legal questions have been left open by this Court. The notice component of procedural due process is largely undefined, and the Ninth Circuit is transforming it into a rule of strict liability. By harnessing procedural due process to the Takings Clause, the Ninth

Circuit is also checkmating the traditional due process rule that only nominal damages are available when the deprivation was otherwise justified.

Schneider originally litigated Fourth Amendment search and seizure issues in District Court, as did the plaintiff in *Perkins*. In both cases, the Ninth Circuit was obliged under specific Fourth Amendment precedent to affirm summary judgment for the defendants. In both cases, the Ninth Circuit then went beyond the ruling of the District Court to take advantage of the relatively-undefined contours of the notice component of procedural due process, decreeing liability as a matter of law based upon abstract conclusions that notice could have been better.

This Petition presents the opportunity to answer important legal questions which are overdue for clarification, and to achieve justice at the same time. Neither governmental nor private defendants should be decreed liable on appeal when they did nothing wrong – when they merely followed a course of conduct mandated by presumptively-valid state law. Nor should the actual knowledge and conduct of defiant, well-informed law-breakers be totally disregarded. This Petition should be granted.

DATED: October 12, 1998

Respectfully submitted,

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APPENDIX

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LOUIS SCHNEIDER, Plaintiff-Appellant, v. COUNTY OF SAN DIEGO, et al., Defendant-Appellee.	)	No. 95-56553 D.C. No. CV-90-01738-MLH MEMORANDUM* (Filed Apr. 24, 1998)

Appeal from the United States District Court
for the Southern District of California
Marilyn L. Huff, District Judge, Presiding

Argued and Submitted March 5, 1997
Pasadena, California

Before: BROWNING and KLEINFELD, Circuit Judges, and MERHIGE,** Senior District Judge.

Louis Schneider appeals the denial of his motion for judgment as a matter of law on his claim that the County of San Diego and its agent, Gregory Reynolds, dba Reybro, Inc., violated his federal due process rights when

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** Honorable Robert R. Merhige, Senior United States District Judge for the Eastern District of Virginia, sitting by designation.

they destroyed vehicles towed from his land as part of a nuisance abatement action. We consider the motion for judgment as a matter of law *de novo* and remand with instructions to grant the motion and determine damages. *See Omega Environmental, Inc. v. Gilbarco, Inc.*, 127 F.3d 1157, 1161 (9th Cir. 1997).

We decline to address the defendants' contention that the jury verdict established Schneider did not own the vehicles. The defendants did not ask the jury to make a separate factual determination on this issue (*See McCord v. Maguire*, 873 F.2d 1271, 1274 (9th Cir. 1989), *as amended*, 885 F.2d 650, 650 (9th Cir. 1989)), and the defendants themselves conceded and offered evidence at trial that Schneider possessed and was the legal owner of at least some of the vehicles.

A. DUE PROCESS CLAIM

We held in the prior appeal that the County was required, consistent with the findings of the County Abatement Board Hearing Officer, to proceed on the theory that Schneider's vehicles constituted a nuisance only because they were parked in violation of County zoning ordinances, that the nuisance was abated as soon as the vehicles were towed from Schneider's property, and that the Notice and Order to Abate did not provide Schneider with constitutionally adequate notice that his vehicles would be destroyed. *See Schneider v. County of San Diego*, 28 F.3d 89, 93 (9th Cir. 1994). On remand, neither the County nor Reybro presented any evidence that Schneider received post-hearing notice that his vehicles would

be destroyed. Schneider was therefore entitled to judgment as a matter of law on his procedural due process claim.

Courts may reconsider issues decided by a prior panel only if: (1) the first decision was clearly erroneous, (2) there has been an intervening change in the law, or (3) the evidence on remand was substantially different. *See Milgard Tempering, Inc. v. Selas Corp. of America*, 902 F.2d 703, 715 (9th Cir. 1990). Construed liberally, the defendants' arguments challenge the prior panel's decision as clearly erroneous. Under this standard, reversal is required only if we have "a definite and firm conviction that a mistake has been committed." *Concrete Pipe & Prod. v. Construction Laborers Pension Trust*, 508 U.S. 602, 623 (1993).

The prior panel's holding was entirely consistent with Ninth Circuit precedent requiring notice reasonably calculated to apprise the interested party of the issues and afford that party a reasonable opportunity to make an appearance. *See Schneider*, 28 F.3d at 92 (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) and *Harris v. County of Riverside*, 904 F.2d 497, 503 (9th Cir. 1990)).

We reject the County's argument that the district court erred in concluding that the hearing officer affirmed the Notice and Order to Abate only insofar as it found Schneider was in violation of Sections 1006 and 6799 of the San Diego County Code. The hearing officer twice referred to these provisions specifically, and effectively narrowed the County's nuisance finding to them.

We also reject the County's argument that our prior opinion acknowledged that the County's Notice and Order to Abate provided Schneider with adequate notice that his vehicles would be dismantled and then effectively held that this "sufficient notice retroactively disappeared" after the hearing officer issued his order. We find no such acknowledgment and no such holding in our prior opinion.

We reject the claim that the prior panel did not properly consider the notice provided and procedures available to Schneider as a result of the Abandoned Vehicle Registered Owner Notifications sent by the County. The Abandoned Vehicle Notifications were sent before the administrative hearing and thus do not undermine the panel's holding that *after* the hearing, the County and Reybro were required to proceed on the theory that the vehicles were a nuisance only because they were parked in violation of County ordinances. *See Schneider*, 28 F.3d at 93. Furthermore, according to a County employee's testimony at trial, the Registered Owner Notifications were merely "courtesy letters" sent in conjunction with the Notice and Order to Abate and did not invoke a new procedure separate from that initiated by the Notice and Order to Abate.

B. TAKINGS CLAIM

We conclude that Schneider's vehicles were taken in violation of the Constitution because the County has not adequately alleged or shown that his vehicles were destroyed to serve a legitimate public purpose. *See Armendariz v. Penman*, 75 F.3d 1311, 1320-21 (9th Cir. 1996) (en

banc) (property may not be taken without a justifying public purpose, even if compensation is paid).

As noted above, the prior panel held that "following the hearing officer's order the County was obligated to proceed on the theory that Schneider's vehicles were nuisances only because they were parked in violation of county zoning ordinances," and that the nuisance was completely abated when the defendants removed the vehicles. *Schneider,* 28 F.3d at 93. As the vehicles were not themselves nuisances, their destruction cannot fall within the "nuisance exception" to the Takings Clause and cannot be said to have served the public purpose of nuisance abatement.

We reject the district court's application of the "conceivable basis" test to hold the jury could have concluded that the County destroyed Schneider's vehicles to further a legitimate governmental purpose. The County has never contended on appeal or pointed to evidence in the record that Schneider's vehicles were destroyed to protect taxpayers from storage costs or for any purpose other than nuisance abatement. It has consistently insisted that they were destroyed to serve the public purpose of nuisance abatement.

Finally, Schneider was not required to exhaust state remedies to succeed with his takings claim because his property was not taken to serve a legitimate public purpose. *See Armendariz,* 75 F.3d at 1320-21 n.5 (because a taking that does not serve a public purpose cannot be constitutional even if compensated, a plaintiff alleging such a taking would not need to seek compensation in state proceedings before filing a federal takings claim).

C. LIABILITY FOR THE CONSTITUTIONAL VIOLATIONS

The County is liable under Section 1983 because it followed its official policy in disposing of Schneider's vehicles. *See Monell v. Department of Soc. Serv.*, 436 U.S. 658, 691 (1978) (municipality is liable under Section 1983 if its "action pursuant to official municipal policy of some nature cause[s] a constitutional tort."); *Owen v. City of Independence*, 445 U.S. 622, 650 (1980) (no good-faith exception); *Evers v. County of Custer*, 745 F.2d 1196, 1203-4 (9th Cir. 1984) (County not immune from Section 1983 liability merely because it acted in accordance with state law).

Reybro is liable under Section 1983 because it jointly engaged with County officials under color of state law in the destruction of Schneider's vehicles. *See Gomez v. Toledo*, 446 U.S. 635, 640 (1980) (Section 1983 plaintiff need only allege that some person has deprived him of a federal right and that the person who deprived him of that right acted under color of state or territorial law); *Goichman v. Rheuban Motors, Inc.*, 682 F.2d 1320, 1322 (9th Cir. 1982) (private persons act under color of state law when they are "jointly engaged with state officials in [a] prohibited action"); *Howerton v. Gabica*, 708 F.2d 380, 384 & n. 10 (9th Cir. 1983) (no good-faith immunity under Section 1983 for private parties in Reybro's situation, although courts sometimes award only nominal damages).

The fact that Reybro is a private contractor acting at the direction of the County, which in turn failed to meet its constitutional obligation to provide notice, does not

excuse the towing company from liability. *See Stypmann v. City and County of San Francisco*, 557 F.2d 1338, 1341-42 (9th Cir. 1977); *Goichman*, 682 F.2d at 1322. We also reject Reybro's argument that as a private company, it cannot be held liable under Section 1983 for a federal taking. *See Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 432-33 n. 9 (1982) (a taking authorized by the state is a taking without regard to whether the state or a party authorized by the state does the actual physical taking).

D. SANCTIONS AGAINST SCHNEIDER'S ATTORNEY

Sanctions are inappropriate. Schneider's attorney, Chesebro, did not lodge a frivolous appeal, unreasonably multiply appellate proceedings, or misrepresent facts relevant to a significant disputed issue. *See Malhiot v. Southern California Retail Clerks Union*, 735 F.2d 1133, 1138 (9th Cir. 1984) (discussing Fed. R. App. P. 38 and 28 U.S.C. § 1927). Counsel explained in the first footnote of Appellant's Opening Brief that "[a]s required under the applicable standard of review, the relevant facts are presented with all credibility determinations construed in the defendants' favor." Accordingly, when he stated that Schneider received the Registered Owner Notification, counsel was properly construing the facts in the light most favorable to the defendants. Similarly, counsel is not subject to sanctions for representing that Schneider appealed the claims contained in the Registered Owner Notifications, since those notifications were sent as a matter of courtesy in conjunction with the original Notice and Order to Abate. Because Schneider clearly appealed

the Notice and Order to Abate, it was not improper for counsel to represent that Schneider had also appealed the substance of the related Registered Owner Notifications.

REVERSED AND REMANDED.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LOUIS SCHNEIDER, Plaintiff-Appellant, v. COUNTY OF SAN DIEGO, et al., Defendant-Appellee.	)	No. 95-56553
	)	D.C. No. CV-90-01738-MLH
	)	ORDER
	)	(Filed Jul. 14, 1998)

Appeal from the United States District Court
for the Southern District of California
Marilyn L. Huff, District Judge, Presiding

Before: BROWNING and KLEINFELD, Circuit Judges, and MERHIGE,* Senior District Judge.

Motion to permit joinder in County of San Diego's combined petition for rehearing and suggestion for rehearing en banc filed by Defendant-Appellees Gregory Reynolds and Rebro Inc. is GRANTED.

The panel has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for an en banc rehearing and no judge of the court has

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* Honorable Robert R. Merhige, Senior United States District Judge for the Eastern District of Virginia, sitting by designation.

Judge Merhige concurred in this order prior to leaving the bench.

requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LOUIS SCHNEIDER, Plaintiff, vs. COUNTY OF SAN DIEGO, et al., Defendant.	CASE NO. CV 90-1738 H **ORDER DENYING PLAINTIFF'S MOTION FOR JUDGMENT AS A MATTER OF LAW; DENYING PLAINTIFF'S REQUEST FOR NEW TRIAL** (Filed Sep. 22, 1995)

Plaintiff Louis Schneider has filed a motion for judgment as a matter of law on the issue of liability and requests a new trial. Defendants oppose the motion.

Having reviewed the papers submitted by both parties, the court denies plaintiff's motion for judgment as a matter of law and request for new trial.

BACKGROUND

Plaintiff Louis Schneider filed a civil rights complaint against the County of San Diego and Reybro, Inc. Plaintiff alleged that defendants improperly destroyed vehicles which were located on his property. The court granted summary judgment in favor of defendants.

On appeal, the primary issue was whether defendants were required to procure a search warrant before removing plaintiff's vehicles. In its opinion, the panel affirmed the court's findings that no warrant was necessary. *Schneider v. County of San Diego*, 28 F.3d 89, 92 (9th

Cir. 1994), *amended, reh'g denied, id., cert. denied* 115 S. Ct. 1112 (1995). The panel, however, found that the County's Notice and Order to Abate was insufficient notice of defendant's intent to dismantle plaintiff's vehicles. *Id.* at 93. The case was remanded back to this court for further disposition. *Id.* Certain issues had not been resolved, such as whether any liability was intentional or reckless. Accordingly, the court set the matter for trial.

The trial in this case lasted from June 13, 1995 to June 16, 1995. During the course of the trial, the jury heard testimony from plaintiff; Jerrold Poole, owner of a bus tour business; James Schweitzer, owner of Pacific Coach Sales; Tom Schneider, plaintiff's son; Dr. Melvin Goldzband; Deputy Sheriff George Crawford; Sue Gray, Chief of the Building Division for the Department of Planning and Land Use; Allan Marshall, a former County code enforcement officer; James Clark, a bus salesperson; David Mendenhall, a bus valuation expert; Carol Howard, a County public nuisance abatement officer; and Greg Reynolds, president of defendant Reybro, Inc.

At trial, the jury heard testimony and reviewed documentary evidence. The court instructed the jury in accordance with the panel's prior ruling. The evidence demonstrated that plaintiff, repeatedly and flagrantly violated vehicle code provisions in order to avoid receiving legal notices and to circumvent liability for the vehicles. (1 Tr. 195, 205; 2 Tr. 4, 5, 7). For example, plaintiff, who is trained as an attorney and admits to a working knowledge of the vehicle code, testified that he did not have certificates of ownership for the thirteen vehicles stored on his property. (1 Tr. at 215).

Furthermore, although the cars were in various states of disrepair, plaintiff would rent the uninsured vehicles to private individuals. 1 Tr. at 207. According to plaintiff,

> [m]ost of the time the people that rented [the cars] were Marines or people who didn't have credit cards.
>
> . . . They needed a vehicle. they wanted to rent a vehicle and I would – if they had proof of insurance, if they weren't AWOL or something like that, if they met some minimum requirements that I set, I would rent them a vehicle.

Id.

Plaintiff also testified that he did not register the vehicles to himself for the sole purpose of circumventing liability. (2 Tr. at 9). "I chose not to do it (register the vehicles in his name) because since I rent – since I rent out vehicles and I'm – if they're registered in may name, I could be held legally liable if persons who rent them gets [sic] in a [sic] accident and doesn't have insurance." *Id.*

////

Plaintiff would rent out vehicles without license plates and would purchase "trip permits," allegedly used by dealers to move cars from one location to another, in lieu of getting a vehicle license or registering the cars. Plaintiff bought these permits to "protect the people . . . I didn't want them getting arrested or having the vehicle impounded." (2 Tr. at 12).

Plaintiff also rented out his buses despite the fact that they were not registered as commercial vehicles. (2 Tr. at 16). For example, plaintiff testified he was renovating a twenty-year old school bus for transportation of school

children. That particular bus, however, had almost 300,000 miles on it and a piece of plywood in place of the radiator grill. (2 Tr. at 39-40).

On June 16, 1995, after three days of testimony, the jury returned a verdict against plaintiff on his 42 U.S.C. § 1983 claims against the County of San Diego and defendant Reybro, Inc. and its president Greg Reynolds. The jury found that defendants did not intentionally violate his rights.

At the close of trial, plaintiff made a motion for judgment as a matter of law which the court denied. Now plaintiff comes before this court and renews his motion for judgment as a matter of law.

DISCUSSION

Judgment as a matter of law may be granted against a party when "a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue." Fed. R. Civ. P. 50. "Denial of such a motion is appropriate if the evidence and its inferences, considered as a whole, and viewed in the light most favorable to the non-moving party, cannot reasonably support a judgment in favor of the moving party." *Jackson v. Gates*, 975 F.2d 648, 656 (9th Cir. 1992), *cert. denied*, 113 S. Ct. 2296 (1993).

Plaintiff makes three arguments: First, he argues that defendants failed to provide him with constitutionally sufficient notice. Second, he contends that destruction of his vehicles constituted an unconstitutional taking as a

matter of law because destruction was not rationally necessary. Third and finally, plaintiff alleges that defendants are liable for the constitutional deprivations caused by the destruction of his vehicle.

As to plaintiff's first argument, the court finds that when the evidence at trial is viewed in the light most favorable to defendants, plaintiff's motion for judgment as a matter of law on this issue cannot stand.

At trial, defendants demonstrated that plaintiff was sent several "registered owner notifications." (3 Tr. at 58). These letters notified plaintiff that his vehicles would be dismantled if they were not removed voluntarily. *Id.* Specifically, on October 12, 1989, a letter regarding the potential destruction of plaintiff's vehicles was sent to plaintiff's address at 20436 Harvard Way, Riverside, California. (2 Tr. at 17-18). Plaintiff received his notification of car registration at that same address (2 Tr. 62), but claims he did not receive the notice letter which was sent certified mail. *Id.*

The reason plaintiff did not receive the certified letter was because he purposefully avoided signing for such letters. Plaintiff testified that he ordered his son, who was living at the Harvard Way address, not to sign for certified mail addressed to plaintiff. *Id.* According to plaintiff, "obviously, what happened, he [plaintiff's son] did not sign for the document." *Id.* at 62. Plaintiff elaborated and stated, "I did tell him, you know, don't sign for anything for me. You don't have my authority to sign for documents – you know – in other words, any mail that's got my name on it, I asked him, 'Don't sign for it,' because if I didn't get it, it would cause me a lot of grief." *Id.* at 63.

Following testimony, the court instructed the jury that as to the takings claim, "[i]n order for the defendant to have violated plaintiff's right under the United States Constitution not to be deprived of property without procedural due process, the violation must have been *intentional* or *reckless*, and not because of mistake, accident, negligence, or other *innocent reason*." (Jury Instr.) (emphasis added).

The court further instructed the jury, pursuant to the appellate panel's opinion that:

> Following the hearing officer's order the County was obligated to proceed on the theory that plaintiff's vehicles were nuisances only because they were parked in violation of county zoning ordinances with regard to the Notice and Order to Abate. The Notice and Order to Abate did not provide Louis Schneider the notice required by due process that his vehicles would be destroyed. You may consider all the evidence in determining whether Louis Schneider had notice and an opportunity to be heard before the destruction of his property.
>
> You are further instructed under the hearing officer's order that the County was only authorized to proceed pursuant to section 16.212 through 16.217 of the San Diego Code of Regulatory Ordinances which sections do not authorize the destruction of vehicles.

(Jury Instr.). This language conforms with that of the panel's opinion in *Schneider*, 28 F.3d at 93.

Based on the testimony and evidence introduced at trial and the jury instructions given by the court, the court finds that there was sufficient evidence for the jury

to find that the county did not intentionally fail to give plaintiff notice before the destruction of his vehicles and that plaintiff had actual knowledge of the destruction.

First, the jury, as the ultimate arbiters of credibility and fact, could have found that the county did not act intentionally or recklessly in its attempts to provide plaintiff with proper notice. In fact, evidence at trial demonstrated that the county sent plaintiff a destruction notice to the address he listed on the DMV registration. This notice was sent certified mail in order to ensure delivery. Plaintiff had previously received DMV registration at the same address. If delivery was incomplete, it was largely because plaintiff had ordered his son not to receive any certified mail at that address. Thus, unbeknownst to the county who believed it was sending mail in a manner that would ensure delivery, the letters were not being accepted because plaintiff refused delivery at the address he provided.

Second, the court notes that plaintiff's testimony belies knowledge of the letter's contents. Plaintiff testified that he contacted county employees for information on how he might build a storage shed for his vehicles, as suggested in the notice to dismantle letters. The jury could have reasonably inferred that plaintiff had in fact received such notice and was attempting to comply with them because the letters were the only way in which plaintiff could have known about the storage shed option.

Reviewing these facts in light most favorable to defendants, the court finds that plaintiff has failed to carry the burden of demonstrating that he did not receive

proper notice. Accordingly, the court denies the motion for judgment as a matter of law as to this issue.

As to plaintiff's second argument, the court declines to grant judgment as a matter of law on this issue. "When reviewing the substance of legislation or governmental action that does not impinge on fundamental rights," the court merely looks to whether "the government *could* have had a legitimate reason for acting as it did." *Wedges/ Ledges of Calif. Inc. v. City of Phoenix, AZ.*, 24 F.3d 56, 66 (9th Cir. 1994) (emphasis in original).

Here, the County demonstrated that the reason plaintiff's vehicles were destroyed was because there was no place to store the thirteen vehicles. The court is not persuaded that liens on the vehicles or plaintiff's property would have covered the cost of storage. As was noted in trial, plaintiff had deeded his property to another party in order to avoid liens. The vehicles were registered to other owners or to incorrect addresses to circumvent liability on plaintiff's part. Accordingly, the court finds that the jury could have concluded that the county demonstrated a legitimate reason for its actions and therefore denies plaintiff's motion for judgment as a matter of law on this issue.

Third and finally the court finds that plaintiff has not provided adequate evidence to support a finding of liability for the destruction of his vehicles. As noted above, the jury could have reasonably found that plaintiff was given notice of intent to destroy his vehicles and these vehicles were destroyed for legitimate reasons. The court does not find that plaintiff's constitutional rights were

intentionally infringed and further finds that the defendants are not liable to plaintiff for destruction of his vehicles.

CONCLUSION

Having reviewed the papers submitted in this matter, the court denied plaintiff's motion for judgment as a matter of law and further denies plaintiff's request for a new trial.

IT IS SO ORDERED.

DATED: 9/20/95

/s/ Marilyn L. Huff
MARILYN L. HUFF, JUDGE
UNITED STATES DISTRICT COURT

JUDGMENT ON JURY VERDICT

FOR THE

United States District Court • SOUTHERN DISTRICT **OF CALIFORNIA**

LOUIS SCHNEIDER

Plaintiff

vs.

COUNTY OF SAN DIEGO, et al

Defendants

CIVIL ACTION FILE NO. 90-1738-H(POR)

(Filed Jul. 18, 1995)

This action came on for trial before the Court and a jury, Honorable MARILYN L. HUFF, United States District Judge, presiding. The issues having been duly tried and the jury having duly rendered its verdict, it is ordered and adjudged judgment be entered in favor of defendants County of San Diego and Gregory Reynolds, D/B/A Reybro Inc. and against plaintiff Louis Schneider.

Dated at San Diego, California, this 17th day of July, 1995

/s/ T. Mason
Clerk of Court

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

LOUIS SCHNEIDER, Plaintiff, v. COUNTY OF SAN DIEGO, et al., Defendants.	)	No. 90-1738-H(POR) SPECIAL VERDICT

We, the jury in the above-entitled action, find the following special verdict on the questions submitted to us:

I

FEDERAL CIVIL RIGHTS PURSUANT TO 42 U.S.C. § 1983

A. Claim Of Unconstitutional Deprivation Of Property Without Procedural Due Process Of Law.

1. Did defendant County of San Diego intentionally or recklessly violate plaintiff Louis Schneider's right not to be deprived of property without procedural due process of law?

Yes _____ No ✓

(If you answered "No," please go to question 5. If you answered "Yes," please go to question 2.)

2. Did that violation result from the implementation of an official policy of the County of San Diego?

Yes _____ No _____

(If you answered "No," please go to question 5. If you answered "Yes," please go to question 3.)

3. Did that violation proximately cause injury or damage to plaintiff Louis Schneider?

Yes _____ No _____

(If you answered "No," please go to question 5. If you answered "Yes," please go to question 4.)

4. Compensatory Damages: What damages resulted to plaintiff Louis Schneider from that violation?

$ _____

B. Claim Of Unconstitutional Taking Of Property.

5. Did defendant County of San Diego violate plaintiff Louis Schneider's right not to be unconstitutionally deprived of property without compensation?

Yes _____ No ✓

(If you answered "No," please go to question 9. If you answered "Yes," please go to question 6.)

6. Did that deprivation result from the implementation of an official policy of the County of San Diego?

Yes _____ No _____

(If you answered "No," please go to question 9. If you answered "Yes," please go to question 7.)

7. Did that violation proximately cause injury or damage to plaintiff Louis Schneider?

Yes _____ No _____

(If you answered "No," please go to question 9. If you answered "Yes," please go to question 8.)

8. Compensatory Damages: What damages resulted to Plaintiff Louis Schneider from that violation?

$ _____

II

FRAUD CLAIM AGAINST GREGORY REYNOLDS, D/B/A REYBRO, INC.

9. Did defendant Gregory Reynolds, D/B/A Reybro, Inc., commit fraud and deceit upon plaintiff Louis Schneider?

Yes _____ No ✓

(If you answered "No," please go to question 12. If you answered "Yes," please go to question 10.)

10. Did that fraud and deceit proximately cause injury or damage to plaintiff Louis Schneider?

Yes _____ No _____

(If you answered "No," please go to question 12. If you answered "Yes," please go to question 11.)

11. Compensatory Damages: What damages resulted to plaintiff Louis Schneider from that fraud and deceit?

$ _____

III

CONVERSION CLAIM AGAINST DEFENDANTS COUNTY OF SAN DIEGO AND GREGORY REYNOLDS, D/B/A REYBRO, INC.

A. Conversion Claim Against County Of San Diego.

12. Did defendant County of San Diego commit conversion of plaintiff Louis Schneider's personal property?

Yes _____ No ✓

(If you answered "No," please go to question 15. If you answered "Yes," please go to question 13.)

13. Did that conversion proximately cause injury or damage to plaintiff Louis Schneider?

Yes _____ No _____

(If you answered "No," please go to question 15. If you answered "Yes," please go to question 14.)

14. Compensatory Damages: What damages resulted to plaintiff Louis Schneider from that conversion?

$ _____

B. Conversion Claim Against Gregory Reynolds, D/B/A Reybro, Inc.

15. Did defendant Gregory Reynolds, D/B/A Reybro, Inc., commit conversion of plaintiff Louis Schneider's personal property?

Yes _____ No ✓

(If you answered "No," please go to question 18. If you answered "Yes," please go to question 16.)

16. Did that conversion proximately cause injury or damage to plaintiff Louis Schneider?

Yes _____ No _____

(If you answered "No," please go to question 18. If you answered "Yes," please go to question 17.)

17. Compensatory Damages: What damages resulted to plaintiff Louis Schneider from that conversion?

$ _____

C. Claim Of Conspiracy To Commit Conversion Against Defendants County Of San Diego And Gregory Reynolds, D/B/A Reybro, Inc.

18. (Answer this question only if you have answered "Yes" to either question 12 or question 15, or "Yes" to both of those two questions):

Did defendant County of San Diego and defendant Gregory Reynolds, D/B/A Reybro, Inc., conspire to commit conversion of plaintiff Louis Schneider's personal property?

Yes _____ No _____

(Whether or not you have answered this question, please go to question 19.)

IV

PUNITIVE DAMAGES CLAIM AGAINST DEFENDANT GREGORY REYNOLDS, D/B/A REYBRO, INC.

19. (Answer this question only if you have answered "Yes" to either question 9, question 15 or question 18, or "Yes" to more than one of those three questions):

Do you find by clear and convincing evidence that there was oppression, malice, or fraud in the conduct on which you based your finding of liability in your answers to questions 9, 15 and/or 18?

Yes _____ No _____

DATED: 5-16-95

/s/ ELDONNA P. LAY
FOREPERSON

JURY INSTRUCTIONS

INSTRUCTION NO. 18

Following the hearing officer's order the County was obligated to proceed on the theory that plaintiff's vehicles were nuisances only because they were parked in violation of county zoning ordinances with regard to the Notice and Order to Abate. The Notice and Order to Abate did not provide Louis Schneider the notice required by due process that his vehicles would be destroyed. You may consider all the evidence in determining whether Louis Schneider had notice and an opportunity to be heard before the destruction of his property.

You are further instructed under the hearing officer's order that the County was only authorized to proceed pursuant to sections 16.212 through 16.217 of the San Diego Code of Regulatory Ordinances which sections do not authorize the destruction of vehicles.

INSTRUCTION NO. 19

In order for the defendant to have violated plaintiff's right under the United States Constitution not to be deprived of property without procedural due process, the violation must have been intentional or reckless, and not because of mistake, accident, negligence or other innocent reason.

INSTRUCTION NO. 20

A requirement of procedural due process of law is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of proceedings and afford them an opportunity to present their objections.

INSTRUCTION NO. 21

One has "constructive notice" of a fact when from all the facts and circumstances known to him at the relevant time he has reason to know that it exists. A person has "reason to know" a fact when he has such information as would prompt a person exercising reasonable care to acquire knowledge of the fact in question.

INSTRUCTION NO. 22

Inquiry notice exists where a person has knowledge of such facts as would lead a fair and prudent person using ordinary care to make further inquiries. Where the person does not take those added steps, he or she is chargeable with knowledge that would have been acquired through diligent inquiry.

INSTRUCTION NO. 23

The plaintiff contends that the defendant deprived him or his right under the United States Constitution not to have his property taken from him without just compensation, and then only for a public purpose. However, that right is not violated when property is taken to abate a public nuisance, and no compensation is owed by the defendant for the value of any property taken for the purpose of abating a public nuisance.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LOUIS SCHNEIDER, Plaintiff,	)	
vs.	)	Case No. 90-1738-H Civil
COUNTY OF SAN DIEGO, et al., Defendants.	)	VOLUME III

TRANSCRIPT OF TRIAL
Held in San Diego, California
June 15, 1995

BEFORE THE HONORABLE MARILYN L. HUFF

Echo Reporting, Inc.
225 Broadway, Suite 350
San Diego, California 92101
(619) 238-5173

* * *

HOWARD - DIRECT

[p. III-63] Q Yes.

A No.

Q What else would you have to do?

A We would follow the same steps and we would send our original letter to the property owner informing him of violations on his property, giving him time to remove these violations voluntarily. If at that time, after the period of time, he didn't respond, I would send a

second letter, giving him opportunity to remove the vehicles voluntarily.

At that time if he did not – within that time frame if he did not comply we would then post the property ourselves with the same type of posting form. And at that time then I would send these letters so that any individual named on the DMV printout would – that might have an interest in those vehicles, would be able to remove those vehicles voluntarily because when we do remove a vehicle we are required by law to dismantle and destroy that vehicle and that is not our objective. Our objective is voluntary compliance.

Q Well, in this case you started that process. You took the first step of it, is that right?

A No.

Q Pardon me?

A That is not our first step.

Q Isn't it your first step to send a warning letter?

A My first step would be to send a letter to the property

* * *

HOWARD – REDIRECT/RECROSS

[p. III-74] Q And that's your understanding of the county's policy, right?

A When we remove a vehicle, it's state law that we dismantle it.

Q And that's what happens in reality?

A When we remove a vehicle.

Q Right. And you understand you're required to do that, right?

A That's correct.

MR. GOEBEL: No further questions.

MR. HILL: No further questions, your Honor.

MR. JONES: I do have a quick follow-up, your Honor.

(Pause.)

RECROSS EXAMINATION

BY MR. JONES:

Q Ma'am, Exhibit 122, the notice of order to abate, doesn't specifically say on it that the vehicles will be towed and dismantled, isn't that correct?

A That's correct.

Q It also doesn't say that they're going to be towed and stored, isn't that correct?

A That's correct.

Q It doesn't say they're going to be towed and fixed up and given back to the owner free of charge do they?

* * *

COUNTY ABATEMENT BOARD
COUNTY OF SAN DIEGO

In re the Appeal of	)	CASE NO. 89-435
LOUIS SCHNEIDER,	)	
From an Order to Abate.	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF ABATEMENT

The appeal from a Notice and Order to Abate dated September 26, 1989, issued by Allan Marshall, Code Enforcement Officer from the Department of Planning and Land Use, County of San Diego, concerning the property located at 2801 East Vista Way, Vista, California, was called for hearing on November 6, 1989, at the County Administration Center, 1600 Pacific Highway, Room 303, San Diego, California, before Colleen C. Richardson, County Hearing Officer.

Appellant, Louis Schneider, appeared personally, with his witness Louis Schneider, Sr. Allan Marshall, Code Enforcement Officer, from the Department of Planning and Land Use and Sue Gray, Principal Code Enforcement Officer from the Department of Planning and Land Use were also present at this hearing.

The Parties were sworn and testified. Appellant argues that the vehicles stored at his property do not qualify as a public nuisance.

Numerous photographs and exhibits were submitted by the San Diego County Department of Planning and Land Use. The photographs and exhibits, having been

reviewed by the appellants with no objection thereto, were received into evidence.

Having considered all evidence as well as the regulatory and zoning ordinances appellant has been charged with violating, the following findings of fact, conclusions of law, and order of abatement is made;

FINDINGS OF FACT

1. The Notice and Order to Abate was posted on the property at 2801 East Vista Way, Vista, California, in a manner most likely to give actual notice to the owner and person in possession of the property on September 26, 1989, at which time it was also mailed to appellant.

2. Appellant responded to the Notice and Order to Abate by filing with Clerk of the Board of Supervisors, on or about October 6, 1989, an appeal.

3. The Clerk of the Board of Supervisors notified the parties in writing of the hearing date, time and location at least ten (10) days before the hearing on November 6, 1989.

4. A hearing was held November 6, 1989, wherein the representatives of the County of San Diego appeared and presented evidence; appellant likewise appeared and presented evidence.

5. The record owner of the property located at 2801 East Vista Way, Vista, California, is Louis Schneider.

6. Louis Schneider is responsible for the facts alleged in the Notice and Order to Abate.

7. The vehicle stored on the subject property are commercial vehicles as defined in Vehicle Code Section 260.

8. It has been physically possible and feasible to correct the conditions as set forth in the Notice and Order to Abate, issued September 26, 1989.

CONCLUSIONS OF LAW

1. The Notice and Order to Abate were served as required by law.

2. The Clerk of the Board of Supervisors notified the parties in writing of the date and location of the hearing held on November 6, 1989, as required by law.

3. Louis Schneider is the owner of the subject property located at 2802 East Vista Way, Vista, California.

4. The violations set forth within the Notice and Order to Abate, specifically violation [sic] of Sections 1006 and 6799 of the San Diego County Code which were declared a public nuisance by the Code Enforcement Officer, do exist.

5. Said violations set forth in Conclusion 4 above constitute a public nuisance pursuant to San Diego Ordinance Section 7141 (New Series) and Louis Schneider is subject to the Uniform Public Nuisance Abatement proceeding contained in chapter 2 of division 6, title 1 (commencing with Section 16.201) of the San Diego Code of Regulatory Ordinances.

6. Considering all of the evidence, the history of the violations, the feasibility of correcting the violations, and

the necessity for a prompt correction of the violations in view of the detriment to the neighborhood and citizens caused by such violations, a reasonable period of time has been given to Louis Schneider to correct the violations set forth in Conclusion 4 above.

NOW THEREFORE, based on the above Findings of Fact and Conclusions of Law, and good cause appearing therefore,

1. IT IS ORDERED that: The Notice and Order to Abate issued by Code Enforcement Officer Allan Marshall of the Department of Planning and Land Use of the County of San Diego, dated September 26, 1989, declaring a public nuisance on the property at 2801 East Vista Way, Vista, California is hereby AFFIRMED;

2. IT IS FURTHER ORDERED that: Louis Schneider shall comply with the order to Abate issued September 26, 1989, and shall do or cause to be done all things necessary to bring the property in compliance with all of the requirements of sections 1006 and 6799 of the San Diego County Zoning Ordinance and Code of Regulatory Ordinances by removing all vehicles, and doing all things necessary to cure the defects which form the basis of the Public Nuisance so declared to the satisfaction of the Code Enforcement Officer of the Department of Planning and Land Use within thirty (30) calendar days from the date this order is mailed to Appellant.

3. IT IS FURTHER ORDERED that: If appellant fails, neglects, or refuses to fully comply with the Order set forth in paragraph 2 above on or before the date specified therein, the County Abatement Officer shall, and is hereby authorized, to do or cause to be done whatever

work is necessary to abate the public nuisance and otherwise to proceed pursuant to Sections 16.212 through 16.217 of the San Diego County Code of Regulatory Ordinances.

4. The appropriate law enforcement agencies are hereby directed to assist officers of the Department of Public Works, Department of Planning and Land Use, Zoning Enforcement in gaining entrance to said property to effectuate the within order and to abate the declared nuisance.

5. THE PARTIES ARE FURTHER ADVISED that:

(a) This Findings of Fact, Conclusions of Law and Order of Abatement is final the date it is filed with the Clerk of the Board of Supervisors;

(b) The time within which judicial review of this decision must be sought is governed by Code of Civil Procedure Section 1094.6, which has been made applicable in the County of San Diego by San Diego County Code Section 11.120. Any petition or other paper seeking judicial review must be filed in the appropriate court not later than the ninetieth (90th) day following the date on which this decision becomes final; however, if within ten (10) days after the decision becomes final, a request for the record of proceedings is filed and the required deposit in an amount sufficient to cover the estimated cost of preparation of such record is timely deposited, the time within which such petition may be filed in court is extended to not later than the thirtieth (30th) day following the date on which the record is either personally delivered or mailed to the party, or his attorney of record, if he has one. A written request for the preparation of the

record of the proceedings shall be filed with the Clerk of the Board of Supervisors, Room 402, County Administration Center, 1600 Pacific Highway, San Diego, California; 92010; and

(c) Nothing in this paragraph concerning the time frame for appeal shall extend or delay the time for compliance with this Order.

DATED: 11/10/89

/s/ Colleen C. Richardson
COLLEEN C. RICHARDSON
County Hearing Officer

[SEAL] COUNTY OF SAN DIEGO

[X] Department of Public Works
5454 Ruffin Road
San Diego, California 92123

[X] Department of Planning & Land Use
5201 Ruffin Road, Suite B
San Diego, California 92123

[ ] Department of Health Services
1700 Pacific Highway
San Diego, California 92101

Name Louis Schnieder Case No. 89-435
Address 510 N. Pacific St., #4
City and Zip Oceanside, CA 92054

NOTICE AND ORDER TO ABATE

NOTICE IS HEREBY GIVEN that *See attached 1(a) through 1(d)* is in violation of Section *see attached 2* of the San Diego County Code. The violation has been declared a public nuisance by the Code Enforcement Officer and must be abated immediately. The public nuisance is on property located at *2801 East Vista Way, Vista, CA 92080.*

YOU ARE HEREBY ORDERED TO ABATE SAID PUBLIC NUISANCE within *Ten* (10) consecutive calendar days from the issuance of this order. The issuance date is specified below. You may abate the nuisance by *See attached (3).* If you fail to abate the public nuisance within the number of days specified, the County may order its abatement by public employees, private contractor, or other means, and the cost of said abatement may be levied and assessed against the property as a special assessment lien or billed directly to the property owner.

YOU MAY APPEAL FROM THIS ORDER OF ABATEMENT but any such appeal must be brought prior to the expiration of the number of days specified above for completion of abatement. The appeal must be in writing; specify the reasons for the appeal; contain your name, address and telephone number; be accompanied by an appeal fee of *Five hundred* dollars (*$500.00*); and be submitted to the Clerk of the Board of Supervisors at the following address:

Clerk of the Board of Supervisors
County of San Diego
1600 Pacific Highway, Room 402
San Diego, CA 92101
Tele. No. (619) 236-2321
ATTN: Chief Deputy Clerk

One who is legally indigent may obtain a waiver of the appeal fee. Upon timely receipt of the appeal and accompanying fee, or waiver, the Clerk of the Board will cause the matter to be set for hearing before a county abatement board and notify you of the date and location of the hearing.

If you have any questions regarding this matter, you may direct them to the county officer issuing this notice at the address or telephone number listed below.

ISSUANCE DATE: September 26, 1989

Name Allan Marshall
Title Code Enforcement Officer
Address 5201 Ruffin Road
Telephone (619) 694-3741

Schnider [sic] A.P.N. 170-112-02-00

September 26, 1989 2801 East Vista Way

Case # 89-435 Vista, CA 92083

1. (A) The storage of commercial fleet busses on agriculturally zoned property, as defined in Section 1430(b).

   (B) The storage of nonoperating vehicles on agriculturally zoned property, as defined in Section 1430(i).

   (C) The storage of recreational vehicle(s) on agriculturally zoned property, as defined in Section 1430(j).

   (D) The parking of commercial vehicles in excess of one (1) ton on private property in an agtriculturally [sic] zoned area, as defined in Section 6799.

2. San Diego Zoning Ordinance violations

   (A) 1006(a) General applicability, as described in Sections 2700-2705 – Limited Agricultural Use Regulation(s), by the Unlawful Storage of Commercial, Recreational and nonoperational vehicles.

   (B) 1430(b) Fleet Storage. Storage or Parking of one (1) or more vehicles used regularly in business operations.

   (C) 1430(i) Storage of Nonoperating vehicles.

   (D) 1430(j) Storage of Recreational Vehicles and Boats.

   (E) 6799 Parking of Commercial Vehicles in Residential and Agricultural Zones in Excess of one (1) ton.

(F) County Regulatory Code Section 21.601 Junk, Automobile Wrecking and nonoperating vehicle Storage Yard, as described in Section 21.601(b) in Section 21.601(b)

(G) County Regulatory Code Section 78.101 Abatement of Public Nuisances – Abandoned Vehicles, as described in Section 78.117, The Unlawful Abandonment of Storage, Parking, Leaving of Any Licensed and Unlicensed Vehicles in a Wrecked, Dismantled or Inoperative Condition Upon any Private or Public Property.

3. (A) Removal of auto vehicles that are nonoperable, not currently licensed to said address, and street legal and safe to operate on streets and highways.

(B) Removal of all recreational vehicle(s) that is not currently registered to said address. Discontinue the occupational of amy [sic] recreational vehicle.

(C) Removal of all buses from said property.

DISTRIBUTION

Original: – Posted on property

Copies: – Louis Schnider [sic] (R)
– Louis Schnider [sic], tenant
– Clerk of The Board
– Carole Howard, Department of Public Works
– File, Department of Planning and Land Use

(R) Certified, return receipt

DPLU Case No. 89-435

I certify that this is a true copy of the Notice and Order to Abate in the above referenced case.

/s/ Allan Marshall
ALLAN MARSHALL
Code Enforcement Officer I

OFFICE OF COUNTY COUNSEL

County of San Diego

GRANVILLE M. BOWMAN
DIRECTOR
(619) 694-2212
(LOCATION CODE 750)

COUNTY ENGINEER
COUNTY AIRPORTS
COUNTY ROAD COMMISSIONER
TRANSPORTATION
OPERATION
COUNTY SURVEYOR
FLOOD CONTROL
LIQUID WASTE
SOLID WASTE

DEPARTMENT OF PUBLIC WORKS
5555 OVERLAND AVE, SAN DIEGO, CALIFORNIA
92133-1295

October 12, 1989

Certified Mail
Return Receipt Requested

A-1 Towing/Dismantling
3195 Tyler
Carlsbad, CA 92008

Case No: 8910035H
License: 772TMG
V.I.N.: 128AS0061754
Make: Fiat

Dear Sirs:

Subject: Maintaining a Public Nuisance – Abandoned Vehicles Registered Owner Notification

The above-described vehicle located at 2801 E. Vista Way, Vista, registered to you appears abandoned and as such constitutes a public nuisance and is in violation of California Vehicle Code Section 22660.

This is your official warning that this abandoned vehicle will be removed and dismantled after fifteen (15) days from the date of this notice pursuant to the California Vehicle Code. After the vehicle has been removed, it must be dismantled and cannot be returned or made operable

again. All costs for removing the vehicle may be assessed to the registered or legal owner.

TO COMPLY

If you are currently in direct control of this vehicle, it must be removed, stored in an enclosed garage, or restored to a fully operational condition, capable of being operated legally upon the highway (currently registered).

If you are no longer the registered or legal owner or have no interest in the vehicle, please contact the Abandoned Vehicle Abatement Office by calling C. Howard at (619) 495-5995 between 1:30 p.m. and 3:30 p.m. within ten (10) days of the date of this notice. Failure to respond to this notice will result in disposal procedures continuing as scheduled.

RIGHT TO APPEAL

You are entitled to a hearing and may accomplish this by contacting the Abandoned Vehicle Abatement Office by Calling C. Howard at (619) 495-5995 between 1:30 p.m. and 3:30 p.m. within ten (10) days of the date of this notice.

If you own the vehicle, you must attend the hearing you request. Failure to appear at a scheduled hearing will result in DISPOSAL PROCEDURES continuing as scheduled.

Very Truly Yours,
Original Signed By:
Robert T. Allen, Chief.
Solid Waste Operations
ROGER F. WALSH
Chief Deputy Director

JW:AVA:lm

CALIFORNIA VEHICLE CODE

"§ 22661. Contents of ordinance

Any ordinance establishing procedures for the removal of abandoned vehicles shall contain all of the following provisions:

****

(f) The requirement that after a vehicle has been removed, it shall not be reconstructed or made operable, . . . "

San Diego County Code of Regulatory Ordinances:

"Sec. 78.114. Any vehicles removed pursuant to this Division may be disposed of by removal to a scrapyard or licensed automobile dismantler's yard. After a vehicle has been removed pursuant to this Division, it shall not be reconstructed or made operable."

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

LOUIS SCHNEIDER,

Plaintiff,

v.

COUNTY OF SAN DIEGO, NORMAN HICKEY, in his official capacity as Chief Administrative Officer for the County of San Diego; LLOYD HARMON, in his official capacity as County Counsel for the County of San Diego; LAUREN WASSERMAN, in his official capacity as Director of Planning and Land Use for the County of San Diego; GRANVILLE BOWMAN, in his official capacity as Director of Solid Waste, a division of Public Works; COLLEEN RICHARDSON, in her official capacity as San Diego County Hearing Officer and in her individual capacity; SUE GRAY, in her official capacity as Zoning Enforcement Officer and in her individual capacity; JUDY EASTMAN, in her official capacity as Solid Waste Enforcement Officer and in her individual capacity;

No. CV 90-1738-H (LSP)

ORDER GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT DISMISSING ENTIRE ACTION AS TO ALL DEFENDANTS, AND DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

(Filed July 30, 1992)

CAROL HOWARD, in her official capacity of Compliance Officer and in her individual capacity;	)
ALLAN MARSHALL, in his official capacity as Abatement Officer and in his individual capacity;	)
REYBRO, INC., a California corporation, dba Quality Auto Recycling;	)
GREGORY REYNOLDS, dba Quality Auto Recycling,	)
Defendants.	)

Defendants' County of San Diego, Norman Hickey, Lloyd Harmond, Lauren Wasserman, Granville Bowman, Colleen Richardson, Sue Gray, Judy Eastman, Carol Howard, and Allan Marshall Motion for Summary Judgment, Defendants' Gregory Reynolds, Reybro Inc., dba Quality Auto Recycling's Motion for Summary Judgment, and Plaintiff Louis Schneider's Motion for Summary Judgment, all came on regularly for hearing pursuant to notice on July 20, 1992, at 10:30 a.m. before the Honorable Marilyn L. Huff, United States District Judge. The County of San Diego and County-Aligned Defendants were represented by Lloyd M. Harmon, Jr., County Counsel by Valerie Tehan, Deputy County Counsel, appearing on the motion. Defendants Gregory Reynolds, Reybro, Inc. dba Quality Auto Recycling were represented by Klinedinst, Fliehman & McKillop by Todd D. Jones, Esq., appearing on the motion. Plaintiff Louis Schneider was represented by the Law Office of Louis E. Goebel by Louis E. Goebel, Esq. and Jeffrey D. Paape Esq., appearing on the motion.

Upon review of the pleadings, evidence and arguments presented in support of and in opposition to the aforesaid motions for summary judgment and good cause appearing therefor, the Court ruled as follows:

Defendants' County of San Diego, Norman Hickey, Lloyd Harmon, Lauren Wasserman, Granville Bowman, Colleen Richardson, Sue Gray, Judy Eastman, Carol Howard, and Allan Marshall Motion for Summary Judgment, and Defendants' Gregory Reynolds, Reybro Inc. dba Quality Auto Recycling's Motion for Summary Judgment are hereby granted, by which the entire action shall be dismissed with prejudice as against all defendants. Plaintiff Louis Schneider's Motion for Summary Judgment is denied. The Court expressly incorporates the ruling orally announced in open court on July 20, 1992, into this order by reference, as though recited in full at this point.

DATED: 7-28-92

/s/ MARILYN L. HUFF
MARILYN L. HUFF, JUDGE
UNITED STATES
DISTRICT COURT

Prepared and submitted by:

LLOYD M. HARMON, JR., County Counsel
DIANE BARDSLEY, Chief Deputy

By /s/ Valerie Tehan
VALERIE TEHAN, Deputy

Attorneys for Defendants County of San Diego, Norman Hickey, Lloyd Harmon, Lauren Wasserman, Granville Bowman, Colleen Richardson, Sue Gray, Judy Eastman, Carol Howard, and Allan Marshall

Approved as conforming to court order by:

/s/ Jeffrey D. Paape
Jeffrey D. Paape, Esq.
GOEBEL & SHENSA
Attorneys for Plaintiff Louis Schneider

/s/ Donald R. McKillop Sr.
Donald R. McKillop, Sr., Esq.
KLINEDINST, FLIEHMAN & MCKILLOP
Attorneys for Defendants Gregory Reynolds, Reybro, Inc. dba Quality Auto Recycling

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LOUIS SCHNEIDER, Plaintiff, vs. COUNTY OF SAN DIEGO, etc., et al., Defendants.	Case No. 90-1738-H San Diego, California Monday, July 20, 1992 11:10 a.m.

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE MARILYN L. HUFF
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:	LOUIS GOEBEL, ESQ. JEFFREY PAAPE, ESQ.
For the Defendants:	VALERIE TEHAN, ESQ. Deputy County Counsel 1600 Pacific Highway Room 355 San Diego, California 92101 TODD JONES, ESQ.
Transcript Ordered by:	VALERIE TEHAN, ESQ.
Court Recorder:	Peter Tagliaferri United States District Court 940 Front Street San Diego, California 92189

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

Transcriber: Mary Lou Lohr
Echo Reporting
7046 Enders Avenue
San Diego, California 92122
(619) 453-3325

[p. 1] SAN DIEGO, CALIFORNIA MONDAY, JULY 20, 1992 11:10 A.M.

(Call to order of the Court.)

MR. GOEBEL: Good morning, your Honor. Louis C. Goebel appearing on behalf of the Plaintiff, Louis Schneider.

MR. PAAPE: Good morning, your Honor. Jeff Paape appearing on behalf of Louis Schneider.

MS. TEHAN: Good morning, your Honor. Valerie Tehan, Deputy County Counsel, appearing on behalf of all county Defendants and the County of San Diego.

MR. JONES: Good morning, your Honor. Todd Jones of (indiscernible) appearing on behalf of Greg Reynolds and Reybo.

THE COURT: Thank you. Does anyone wish to be heard beyond the pleadings? Or do you wish to submit?

MS. TEHAN: Your Honor, I think that the county would be willing to submit unless your Honor has any questions.

THE COURT: Plaintiff?

MR. GOEBEL: Your Honor, I think we've been heard enough.

THE COURT: Thank you. This is cross motions for summary judgment.

The Court will grant the Defendants' motions for [p. 2] summary judgment on all claims contained in the complaint.

It is well established that the warrant requirement of the Fourth Amendment applies to entries onto private land to search for and abate suspected or declared nuisances, *Michigan vs. Tyler,* 98 S.Ct. 1942 at 1947 through 49 (1978); *Connor* [sic] *vs. City of Santa Ana,* 897 F.2d 1487 at 1490, Ninth Circuit (1990).

The basic purpose of the Fourth Amendment is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials, *Michigan,* 98 S.Ct. at 1947.

A warrant is not required in all instances, however, where the search and seizure of the property falls into well established, carefully defined classes of cases which permit warrantless searches and seizures, *Connor* [sic], 897 F.2d at 1491.

In order to establish an invasion of privacy protected by the Fourth Amendment, the Plaintiff must exhibit an actual subjective expectation of privacy in the area entered, *Smith vs. Maryland,* 442 U.S. 735 at 740 (1979).

In addition, this expectation must be one that society is prepared to accept as reasonable and therefore legitimate.

In other words, the Plaintiff must show not only [p. 3] did he have a subjective expectation of privacy, but that the individual's expectation viewed objectively was

justifiable under the circumstances, *Tapps vs. United States* (phonetic), 339 U.S. 347 at 353 (1967).

The Defendants contend that a warrant was not required because of the open field exception to the Fourth Amendment. *Oliver vs. United States,* 104 S.Ct. 1735 (1984).

In *Oliver,* the court held that an individual may not legitimately demand privacy for activities conducted outdoors in the fields because open fields do not provide the setting for those intimate activities that the amendment is intended to shelter from governmental interference, same – at 1741.

By contrast, the *Oliver* court noted that an area immediately outside the physical structure of the home may be entitled to Fourth Amendment protection if the area harbors intimate activity associated with the sanctity of a man's home and the privacies of life.

In *Oliver,* the court found that there was no reasonable expectation of privacy in open field where the property owner erected fences, posted "no trespassing" signs and planted marijuana in the secluded portion of the property.

The court noted that, even though the intrusion upon an open field is a trespass of common law, this is not [p. 4] an illegal search in the constitutional sense.

Subsequently, the Supreme Court further refined the open field doctrine in *United States vs. Dunn,* 480 U.S. 294 (1987).

Noting that potential inquiries, whether the area in question involves intimate activity normally associated

with the use of the home, the court stated that purtilege (phonetic) questions should be resolved with reference to the following factors: (1) the proximity of the area to the home; (2) whether the area is linked to the home by surrounding enclosure; (3) the nature of the uses to which the area is put; and (4) the steps taken to protect the area from observation by people walking by.

In *Dunn*, the court held that, despite the existence of a perimeter fence completely enclosing defendant's property, a barn located 60 yards from the house was not within the purtilege [sic].

The court found especially significant the fact that the barn was not being used for intimate activities of the home. See the case at 302.

Applying these factors as well as the subjective and objective expectation of privacy factors enunciated in *Smith*, the Plaintiff lacks a reasonable expectation of privacy in the field where the vehicles were stored.

While the Plaintiff's declaration indicates he had [p. 5] a subjective expectation of privacy, such an expectation is not objectively reasonable. The vehicles were located approximately 240 feet from Plaintiff's tenant's home. The property was not protected from observation by neighbors or people passing by on a major public highway.

Although the property was partially enclosed by a see-through, chain-link fence, there was no gate blocking access to the stored vehicles. The area where the vehicles were stored was not used for intimate home activities but

for the storage of vehicles. Moreover, the Plaintiff didn't live on the property.

The Plaintiff contends that *Connor* [sic] is on point with the facts of the present case and compels summary judgment in his favor. Plaintiff's reliance on *Connor* [sic], however, is misplaced.

In *Connor* [sic], the plaintiff stored several old and seemingly inoperable vehicles in their back yard. The property was completely enclosed with a tall fence that prevented public view onto the yard. Moreover, the police broke down the fence in order to tow the vehicles. There, the city did not argue that the city lot constituted an open field; rather, the city's contention was that the plaintiffs had received sufficient process and warrant – was just not required.

Notably, the court in *Connor* [sic] did not analyze [p. 6] whether or not the back yard was being used for intimate activities of the home.

The final constitutional argument raised by the Plaintiff is that he was denied procedural due process because he was denied a post-seizure hearing. This argument, however, is without merit. The Plaintiff received a pre-seizure hearing where he was afforded notice and the opportunity to be heard and to present evidence.

The fundamental requirements of procedural due process are noted [sic] and an opportunity to be heard before the Government may deprive a person of a protected property interest, *Connor* [sic], 897 F.2d at 1492.

Since the Plaintiff was provided notice and an opportunity to be heard, Plaintiff's due process rights were not violated.

In sum, the Plaintiff did not suffer any constitutional deprivations when the county entered and seized the vehicles. As such, the Defendants are entitled to summary judgment on the constitutional claims and on the trespass claims because of qualified immunity.

The issue on the remaining claim is whether the Plaintiff has a private cause of action for an alleged failure to comply with the provisions of the California Vehicle Code.

The Plaintiff contends that both the county and [p. 7] Reynolds Defendants failed to comply with the procedural and substantive provisions of the California Vehicle Code.

The Plaintiff fails to identify and analyze any legal theory that would support a cause of action for violation of the Vehicle Code. Notwithstanding, a review of the disputed statute reveals that liability will not attach to the Defendant.

California Vehicle Code Section 22660 specifically provides that the county may adopt ordinances that permit the removal of vehicles that constitute a public nuisance.

Additionally, a licensed dismantler like Reybo need not comply with the notice requirements of Section 11520 contrary to Plaintiff's assertion. See California Vehicle Code Section 22664.

Plaintiff's other alleged violations of the California Vehicle Code address an alleged requirement for a post-seizure hearing; however, for the reasons previously stated, a post-seizure hearing is not required where the Plaintiff is afforded proper notice and an opportunity to be heard at [sic] a pre-seizure notice.

As such, the Defendants are entitled to summary judgment on this claim as well.

In sum, the Defendants are entitled to summary judgment on each claim contained in the complaint.

Would you prepare the order?

[p. 8] MS. TEHAN: Yes, your Honor.

THE COURT: And would you incorporate in the order a sentence saying the Court incorporates its oral ruling as the basis for its ruling on the summary judgment?

MS. TEHAN: Yes.

THE COURT: Would you submit it to Counsel and have it submitted to the Court with Counsel's signature by next Monday?

MS. TEHAN: Yes, your Honor.

THE COURT: Thank you.

MR. GOEBEL: Thank you, your Honor.

MR. JONES: Thank you, your Honor.

(Proceedings concluded.)

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Mary Lou Lohr — July 21, 1992

Transcriber — Date

AO 450 (Rev. 5/85) Judgment in a Civil Case

United States District Court

SOUTHERN DISTRICT OF CALIFORNIA

LOUIS SCHNEIDER

v.

COUNTY OF SAN DIEGO, et al.

JUDGMENT IN A CIVIL CASE

(Filed Aug. 3, 1992)

CASE NUMBER: 90-1738-H(LSP)

[ ] **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

[X] **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED Defendants' Motions for Summary Judgment is granted. Plaintiff's Motion for Summary Judgment is denied. The entire action is dismissed with prejudice as to all Defendants.

. . .

8/3/92
Date

DON HENDRIX
Clerk

/s/ John P. [Illegible]
(By) Deputy Clerk

Louis Schneider
510 N. Pacific St. Ste. 4
Oceanside, Ca 92054
(619) 722-6464

Plaintiff, In Pro Per

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

LOUIS SCHNEIDER, Plaintiff, vs. COUNTY OF SAN DIEGO, a municipal corporation; NORMAN HICKEY, in his official capacity as CHIEF ADMINISTRATIVE OFFICER for the COUNTY OF SAN DIEGO; LLOYD HARMON, in his official capacity as COUNTY COUNSEL for the COUNTY OF SAN DIEGO; LAUREN WASSERMAN, in his official capacity as DIRECTOR OF PLANNING and LAND USE for the COUNTY OF SAN DIEGO; GRANVILLE BOWMAN, in his official capacity as DIRECTOR OF SOLID WASTE, a division of PUBLIC WORKS; COLLEEN RICHARDSON, in her official capacity as SAN DIEGO COUNTY HEARING OFFICER and in her individual capacity; SUE GRAY, in her official capacity as ZONING ENFORCEMENT OFFICER and in	CASE NO. 90 1738 G (IEG) COMPLAINT FOR CIVIL RIGHTS VIOLATIONS; DAMAGES AND INJUNCTIVE RELIEF JURY TRIAL DEMANDED (Filed Dec. 13, 1990)

her individual capacity; JUDY EASTMAN, in her official capacity as SOLID WASTE ENFORCEMENT OFFICER and in her individual capacity; ROGER WALSH, in his official capacity as CHIEF DEPUTY DIRECTOR, DEPARTMENT OF PUBLIC WORKS and in his individual capacity; CAROL HOWARD, in her official capacity of COMPLIANCE OFFICER and in her individual capacity; ALLAN MARSHALL, in his official capacity as ABATEMENT OFFICER and in his individual capacity; REYBRO INC., a California Corporation, dba QUALITY AUTO RECYCLING; GREGORY REYNOLDS dba QUALITY AUTO RECYCLING.

Defendants.

Comes now the plaintiff who alleges the following:

PARTIES

1. Plaintiff LOUIS SCHNEIDER is a citizen of the United States of America and resides in the City of Oceanside, County of San Diego, State of California.

2. Defendant NORMAN HICKEY, is now, and at all times material hereto was, duly appointed, employed, and acting as CHIEF ADMINISTRATIVE OFFICER of the COUNTY OF SAN DIEGO, a municipal corporation and governmental subdivision of the State of California. NORMAN HICKEY is sued herein in his official capacity,

and in such capacity exercises supervision over all Department Heads of the County of San Diego.

3. Defendant LLOYD HARMON, is now, and at all times material hereto was, duly appointed, employed, and acting as COUNTY COUNSEL of the COUNTY OF SAN DIEGO and is sued herein in his official capacity, and in his individual capacity.

4. Defendant LAUREN WASSERMAN, is now, and at all times material hereto was, duly appointed, employed, and acting as DIRECTOR OF PLANNING and LAND USE for the COUNTY OF SAN DIEGO, functioning in an administrative capacity at all times material hereto, and is sued herein in his official capacity and in his individual capacity.

5. Defendant GRANVILLE BOWMAN, is now, and at all times material hereto was, duly appointed, employed and acting as DIRECTOR OF SOLID WASTE, a division of PUBLIC WORKS, for the COUNTY OF SAN DIEGO, and is sued herein in his official and individual capacities.

6. Defendant COLLEN RICHARDSON, is now, and at all times material hereto was, duly appointed, employed, and acting as COUNTY HEARING OFFICER for the COUNTY OF SAN DIEGO, and is sued herein in her official capacity and in her individual capacity.

7. Defendant SUE GRAY, is now, and at all times material hereto was, duly appointed, employed, and acting as ZONING ENFORCEMENT OFFICER, for the Department of Planning and Land Use, in charge of the training of ABATEMENT OFFICERS for the COUNTY OF SAN

DIEGO, and is sued herein in her official capacity and in her individual capacity.

8. Defendant JUDY EASTMAN, is now, and at all times material hereto was, duly appointed, employed, and acting as SOLID WASTE DIVISION ENFORCEMENT OFFICER for the DEPARTMENT OF PUBLIC WORKS of the COUNTY OF SAN DIEGO, and is sued herein in her official capacity and in her individual capacity.

9. Defendant CAROLE HOWARD, is now, and at all times material hereto was, duly appointed, employed, and acting as COMPLIANCE OFFICER for the DEPARTMENT OF PUBLIC WORKS of the COUNTY OF SAN DIEGO, and is sued herein in her official capacity and in her individual capacity.

10. Defendant ALLAN MARSHALL, is now, and at all times material hereto was, duly appointed, employed and acting as ABATEMENT OFFICER for the COUNTY OF SAN DIEGO, and is sued herein in his official capacity and in his individual capacity.

11. QUALITY AUTO RECYCLING is a fictitious business name by which defendant REYBRO INCORPORATED, a California Corporation, at all times hereto, was doing business in the City of Vista, County of San Diego, State of California.

12. Defendant GREGORY REYNOLDS, at all times material hereto was doing business in the City of Vista, County of San Diego, State of California.

JURISDICTION

13. This action arises under the United States Constitution, particularly under the provisions of the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States, and under federal law, particularly the Civil Rights Acts, Title 42 United States Code, Section 1983 et seq.

14. This court has jurisdiction of this cause under and by virtue of Title 28 of the United States Code, Section 1343.

15. Each and all of the acts of defendants alleged herein were done by defendants, and each of them, under the color and pretense of the statutes, ordinances, regulations, customs, policies and usages of the State of California, the county of San Diego, and under the authority of their office as code enforcement officials, public officials and persons acting under contract to such officials.

FACTUAL ALLEGATIONS

16. On or about July 17, 1989, defendant SUE GRAY, in her capacity as ZONING ENFORCEMENT OFFICER for the County of San Diego, assigned defendant ALLAN MARSHALL, in the latter's capacity as Abatement Officer for the County of San Diego, to proceed to the location of plaintiff's residence to cite plaintiff for vehicles which defendant GRAY believed to be public nuisances as defined by the San Diego Code of Regulatory Ordinances, Sections 16.201-16.218.

17. On July 17, 1989, defendant ALLAN MARSHALL appeared at plaintiff's property located at 2801 E. Vista

Way, Vista, California, and demanded entry to said property for the purpose of searching the premises to locate any motor vehicles located thereon and for the further purpose of conducting a search of any motor vehicles found on said premises.

18. Plaintiff at all times material herein, was the owner of the real property located at 2801 E. Vista Way, Vista, California.

19. On July 17, 1989, plaintiff refused defendant ALLAN MARSHALL'S demand for entry onto the premises located at 2801 E. Vista Way, Vista, California, refused to permit said defendant to search motor vehicles located upon said premises, demanded that defendant ALLAN MARSHALL produce a search warrant authorizing his search of the premises and vehicles and informed said defendant that a warrantless search of his property would be considered by plaintiff to be a violation of plaintiff's constitutional rights under the United States Constitution.

20. On July 17, 1989, defendant ALLAN MARSHALL unlawfully entered onto the premises located at 2801 E. Vista Way, Vista, California, and commenced to search for vehicles located thereon over the express objection of plaintiff.

21. On July 17, 1989, defendant ALLAN MARSHALL did also unlawfully conduct searches of ten vehicles owned by plaintiff over the express objection of plaintiff.

22. On September 1, 1989, defendant ALLAN MARSHALL did return to the property located at 2801 E. Vista Way, Vista, California, and did unlawfully enter upon the

property at that time and did conduct an additional search of said property and three additional vehicles which had been parked at said premises.

23. In conducting the searches of the vehicles as heretofore alleged, defendant ALLAN MARSHALL performed these searches as to locate vehicle identification numbers not readily apparent, for the purpose of determining whether such vehicles had been stolen and to determine the true owner(s) of said vehicles.

24. At the time defendant ALLAN MARSHALL conducted the searches referred to thus far, he did not have a search warrant to permit him to lawfully conduct a search of the premises located at 2801 E. Vista Way, Vista, California, nor the vehicles located thereon.

25. As a direct and proximate result of the unlawful searches of July 17, 1989 and September 1, 1989, a Notice and Order to Abate motor vehicles alleged to constitute a public nuisance pursuant to the San Diego County Code was sent to plaintiff by defendant ALLAN MARSHALL on or about September 26, 1989.

26. Plaintiff filed a timely administrative appeal of said Notice and Order with the defendant COUNTY OF SAN DIEGO regarding the actions of its Code Enforcement officer, defendant ALLAN MARSHALL, the allegations contained in the Notice and Order to Abate issued by said defendant on September 26, 1989, and the proposed action to be taken by the COUNTY OF SAN DIEGO as a result thereof.

27. Defendant COUNTY OF SAN DIEGO did expressly authorize defendant COLLEEN C. RICHARDSON to act

on its behalf as its authorized decision-maker with respect to the administrative appeal of plaintiff.

28. On or about November 10, 1989, defendant COLLEEN C. RICHARDSON did issue a decision on behalf of defendant COUNTY OF SAN DIEGO which declared that the motor vehicles located on plaintiff's property on July 17, 1989, and September 1, 1989, were in violation of the San Diego County Code, authorized officers and agents of the defendant COUNTY OF SAN DIEGO to enter onto the property of plaintiff for the purpose of seizing the motor vehicles alleged to be in violation of the San Diego County Code and did direct law enforcement agencies to assist officers of the San Diego Department of Public Works, Department of Planning and Land Use, Zoning Enforcement in gaining entrance to plaintiff's property to effectuate her order and to seize the motor vehicles alleged to constitute a public nuisance under the San Diego County Code.

29. By her decision dated November 10, 1989, on behalf of defendant SAN DIEGO COUNTY, defendant COLLEEN C. RICHARDSON did purport to authorize a warrantless search of plaintiff's premises at 2801 E. Vista Way, Vista, California, and the warrantless seizure of motor vehicles located thereon.

30. On Tuesday, December 19, 1989, defendants SUE GRAY, JUDY EASTMAN, CAROL HOWARD, and ALLAN MARSHALL, together REYNOLDS and REYBRO INC., dba QUALITY AUTO RECYCLING, and other agents of the COUNTY OF SAN DIEGO, whose identities are presently unknown, did unlawfully enter upon plaintiff's premises at 2801 E. Vista Way, Vista, California, and

did unlawfully seize a total of thirteen motor vehicles therefrom.

31. At the time of their actions as set forth in paragraph 32 above, the defendants named therein did not have a search warrant or other judicial authorization permitting them to conduct a search of the premises at 2801 E. Vista Way, Vista, California, and did not have a search warrant or other judicial authorization permitting them to seize the thirteen motor vehicles which were seized on that day.

32. Plaintiff is informed and believes and based thereupon alleges that defendants GREGORY REYNOLDS and REYBRO INC., dba QUALITY AUTO RECYCLING have caused the vehicles seized from plaintiff's property to be destroyed.

33. Plaintiff is informed and believes and thereupon alleges that defendant SUE GRAY provided instruction, guidance, and/or information to defendants herein, including, but not limited to defendants, JUDY EASTMAN, CAROL HOWARD, ALLAN MARSHALL, GREGORY REYNOLDS, and REYBRO INC., dba QUALITY AUTO RECYCLING regarding these defendants purported ability to conduct warrantless searches and seizures of vehicles alleged to constitute a public nuisance under the authority of the San Diego County Code.

34. Plaintiff is informed and believes and thereupon alleges that defendants LLOYD HARMON, LAUREN WASSERMAN, and GRANVILLE BOWMAN were each responsible for training, supervising, and directing employees of the COUNTY OF SAN DIEGO within each of these defendants' respective areas of responsibility,

concerning the duties and functions of said subordinate employees and the clearly established law relevant to said duties and functions.

35. Plaintiff is informed and believes and thereupon alleges that defendants LLOYD HARMON, LAUREN WASSERMAN, and GRANVILLE BOWMAN were each grossly negligent in the training, supervision and direction of their subordinates in that they failed to provide adequate training and direction regarding the application of the Fourth Amendment's warrant requirement to searches and seizures when conducted by agents of the COUNTY OF SAN DIEGO to abate an alleged public nuisance, and that such gross negligence did proximately result in the warrantless search and seizure of plaintiff's property as set forth herein.

36. The actions of defendants SUE GRAY, JUDY EASTMAN, CAROL HOWARD, and ALLAN MARSHALL, GREGORY REYNOLDS and REYBRO INC., dba QUALITY AUTO RECYCLING, and each of them, were taken pursuant to the customs, policies and practices of the defendant COUNTY OF SAN DIEGO.

35. The failure of defendants LLOYD HARMON, LAUREN WASSERMAN, and GRANVILLE BOWMAN, and each of them, to properly train, supervise and direct their subordinates regarding the application of the Fourth Amendment's warrant requirement to searches and seizures when conducted by agents of the COUNTY OF SAN DIEGO to abate an alleged public nuisance, was pursuant to the customs, policies and practices of the defendant COUNTY OF SAN DIEGO and was in reckless

and/or callous disregard for the constitutional rights of plaintiff.

36. Plaintiff has suffered damages as a result of the actions of defendants as set forth herein, including but not limited to the loss of earnings and opportunities, the loss of business goodwill, property loss, and mental and emotional distress of a substantial and enduring nature.

[FIRST COUNT]

37. The conduct of the defendants, and each of them, deprived plaintiff of rights, privileges and immunities secured to him by the constitution of the United States, including the right of plaintiff to be secure in his person and effects against unreasonable search and seizure under the Fourth and Fourteenth Amendment to the Constitution of the United States.

38. The actions of defendants herein were taken in callous and/or reckless disregard of the constitutional rights of plaintiff, thus justifying the imposition of punitive damages in an amount to be determined upon trial.

[SECOND COUNT]

For this SECOND COUNT, plaintiff additionally alleges the following;

39. Plaintiff is informed and believes and thereupon alleges that the motor vehicles seized from plaintiff's property on December 19, 1989, as previously set forth herein, were placed in the care, custody and control of defendants GREGORY REYNOLDS and REYBRO INC., dba QUALITY AUTO RECYCLING.

40. Plaintiff is informed and believes and based thereon alleges that the defendant COUNTY OF SAN DIEGO has established a custom, policy or practice of taking motor vehicles seized by its agents pursuant to the ostensible authority of the San Diego Code and giving said vehicles to the contracting agent which has seized said vehicles from the property concerned, permitting said agents to sell the vehicles seized, or parts thereof, and granting said agents permission on behalf of the COUNTY OF SAN DIEGO to keep all proceeds from the sale of said vehicles.

41. Plaintiff is informed and believes and thereupon alleges that some, if not all, of the motor vehicles seized from plaintiff's property on December 19, 1989, and placed in the care, custody and control of defendants GREGORY REYNOLDS and REYBRO INC., dba QUALITY AUTO RECYCLING have been sold, either whole or in part, and that defendants GREGORY REYNOLDS and REYBRO INC., dba QUALITY AUTO RECYCLING claim the proceeds from the sale of said vehicles and further claim title to all parts salvaged from the vehicles seized from plaintiff's property.

42. As a direct and proximate result of the policies, practices and customs of the defendant COUNTY OF SAN DIEGO as set forth in paragraph 40 above, plaintiff has been deprived of rights, privileges and immunities secured to him by the Constitution of the United States, including the right not to be permanently deprived of property without due process of law, and the right not to have his property taken without just compensation, rights secured by the Fifth and Fourteenth Amendment to the Constitution of the United States.

WHEREFORE, plaintiff prays for the following;

1. For general damages in the sum of $1,000,000.

2. For special damages according to proof.

3. For an award of punitive damages against those defendants whose conduct is found upon trial to have been in callous or reckless disregard of the constitutional rights of plaintiff.

4. For such equitable and injunctive relief as is appropriate upon the evidence in this matter, including but not limited to;

(A) An Order of this Court compelling the COUNTY OF SAN DIEGO to instruct its agents, employees, contractors and personnel to refrain from conducting warrantless nuisance abatement searches and/or seizure in situations where exigent circumstances are lacking and consent to the proposed search or seizure has not been provided.

(B) An order of this court compelling the COUNTY OF SAN DIEGO to utilize available judicial fora and to obtain a court order permitting the forfeiture of a motor vehicle prior to taking action to permanently deprive any person(s) of motor vehicle(s) owned by them which have been seized by agents of the COUNTY OF SAN DIEGO as alleged nuisances under the provisions of the San Diego County Code unless consent to such forfeiture has been previously granted.

5. For costs or suit herein incurred.

6. For an award of attorney's fees and costs pursuant to 42 U.S.C. section 1988.

7. For such other and further relief as the court deems just and proper.

DATED: December 7, 1990

/s/ Louis Schneider
LOUIS SCHNEIDER
Plaintiff In Pro Per

PLAINTIFF HEREBY MAKES DEMAND FOR TRIAL BY JURY

/s/ Louis Schneider
LOUIS SCHNEIDER
Plaintiff In Pro Per

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LOUIS SCHNEIDER,	)	
Plaintiff,	)	
vs.	)	
COUNTY OF SAN DIEGO,	)	Case No. 90-1738-H
Defendant.	)	Civil
	)	VOLUME II

TRANSCRIPT OF TRIAL
Held in San Diego, California
June 14, 1995

BEFORE THE HONORABLE MARILYN L. HUFF

Echo Reporting, Inc.
225 Broadway, Suite 350
San Diego, California 92101
(619) 238-5173

* * *

GRAY – DIRECT

[p.II-138] Q How did you interpret the hearing officer's order? What was it telling you to do?

[p.II-139] A It was telling me to remove the vehicles, that she had affirmed the entire posting, that she had specifically called up a couple of sections of the zoning ordinance, but did also include the County code of regulatory ordinances that was in violation and that they needed to come into compliance with all of those ordinances.

* * *

Q Were you subsequently asked to assist in determining what the County was to do with the vehicles removed from Mr. Schneider's property?

A Yes.

Q And what did you advise?

A I had the discussion with the Department of Public Works and explained that I felt – I felt, after reading the order, we did not have a lot of choices. She had affirmed the entire order. Mr. Schneider had admitted that vehicles on the property were non-operative. I asked Public Works if they had sent out the required letters telling him that the vehicles would be removed and destroyed and was told yes, [p.II-140] that they had done that. I said, then, I think we move forward in accordance with state law as you would removing any vehicles under the abandoned and inoperative vehicle section.

Q Are you familiar with the state law and the County ordinances that pertain to the removal and destruction of abandoned and inoperative vehicles?

A I generally have knowledge of those, yes.

Q Are you aware of the fact that they require the dismantling of the vehicles?

A Yes, I am aware of that.

* * *

GRAY - RECROSS

[p.II-168] Q This order did not in any way authorize the destruction of vehicles, did it?

A Yes, I believe it did.